STAT

OGC 77-1090
16 February 1977

OLC #77-0636

Execut...
77-6415/1

MEMORANDUM FOR: Acting Director of Central Intelligence

FROM: Anthony A. Lapham
General Counsel

SUBJECT: Sources and Methods Legislation

Attached for your signature is a letter to Attorney General Bell relating to the sources and methods legislation that was introduced as H.R. 12006 in the 94th Congress, and urging that prompt consideration be given to the introduction of similar legislation, with the support of the Justice Department, in the 95th Congress. The letter is intended to get a dialogue going on this subject with the new team at Justice.

STAT

Anthony A. Lapham

Attachment

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Original - Addressee
1 - DDA
1 - DDO
1 - OLC
1 - D/DCI/IC
1 - ER via Ex Sec
1 - OGC

Washington, D.C. 20505

Exec...
77-6415

25 Feb 1977

Honorable Griffin B. Bell
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Bell:

As you know, the President, in his message of 18 February 1976, proposed legislation to protect intelligence sources and methods from unauthorized disclosure. This proposal was subsequently introduced as H.R. 12006, but no similar legislation was introduced in the Senate. I feel strongly that there is a need for such legislation, and I seek your support to the end that an appropriate bill, endorsed by the Justice Department, might be introduced early in the 95th Congress.

Over the years, serious damage to our foreign intelligence effort has resulted from the unauthorized disclosure of information related to intelligence sources and methods. In most cases, the sources of these leaks have been individuals who acquired access to sensitive information by virtue of a special relationship of trust with the United States Government. Current law, in our opinion, does not adequately cover situations where a deliberate breach of this relationship of trust occurs. In most instances, the Government must prove either an affirmative intent to harm the United States or aid a foreign power, or a tendency of the leaked information to produce such harm or give such aid. The evidence required to establish these elements commonly requires the revelation of additional sensitive information in open court or, at the very least, the further dissemination and confirmation of the information which is the subject of the prosecution. Given the difficulties of proof, and the understandable reluctance to incur the additional damage occasioned by such proof, the existing laws are seldom invoked and their deterrent value is slight.

Presently, Section 102(d)(3) of the National Security Act of 1947, as amended, places a responsibility on the Director of Central Intelligence to prevent the unauthorized disclosure of intelligence sources and methods.

However, this responsibility is not backed up by statutory penalties for unauthorized disclosure. Legislation along the lines of H. R. 12006 as introduced in the House in the 94th Congress, would close this gap to the limited degree necessary to carry out a foreign intelligence program, but at the same time give full recognition to our American standards of freedom of information and protection of individual rights.

H. R. 12006 acknowledges the authority of the Director of Central Intelligence, and the heads of other agencies expressly authorized by law or by the President to engage in foreign intelligence activities for the United States, to designate certain information as relating to intelligence sources and methods and provides a criminal penalty for the disclosure of such information to unauthorized persons. It also provides for injunctive relief in those instances where unauthorized disclosure is threatened and serious damage to the intelligence collection effort would result.

The sanctions set forth in H. R. 12006 are limited to individuals entrusted with the sensitive information described in the legislation or who gain access to it by virtue of their position as officer, employee, contractor, or other special relationship with the United States Government. It would not permit either criminal action or injunctive relief against representatives of the press or the publications they represent, except in a case such as Marchetti where a publisher is acting as an agent for someone subject to the sanctions of the legislation.

Public disclosure of classified intelligence gives foreign powers keen insight into the capabilities and limitations of our intelligence system. It also undermines the attitude toward security at all levels of Government. If disclosures of our most guarded secrets and our most sensitive sources and methods of collecting intelligence continue to occur, the end result is a loss of faith in the system designed to protect such matters. It also threatens the very safety and welfare of those who may be providing us intelligence at a substantial personal risk.

Another factor that is often not considered is that, in addition to the risks to national security, such public disclosures can also result in sizeable monetary costs to the United States Government. These costs are often difficult to measure, but the fact remains that disclosure of the manner in which certain information is acquired stimulates and enables the target country to take counteractions designed to insure against further U. S. access to data of the type disclosed.

It is a tragedy to see articles in the news media quoting our intelligence reports verbatim without regard to possible damage to sensitive collection

programs. The inevitable result of such disclosures can only mean a sharp curtailment of the effectiveness, if not the disappearance, of some of our most important intelligence sources, human as well as technical.

Legislative proposals to protect intelligence sources and methods were initiated several years ago by this Agency and have been extensively reviewed within the executive branch. We have worked particularly closely with the Department of Justice to come up with an effective and satisfactory bill. On 31 December 1975, the Deputy Attorney General advised the Director of Central Intelligence that, with certain relatively minor amendments, the proposed statute was basically satisfactory from the standpoint of the Department's concerns. The legislation proposed by the President and introduced as H. R. 12006 incorporated those amendments.

I sincerely believe that passage of a bill that follows the general pattern of H. R. 12006 would be a strong deterrent to exposure of intelligence sources and methods by persons who have such information by virtue of their relationship with the U. S. Government. I hope that you will support the introduction of such protective legislation in the 95th Congress, and I can assure you of my personal interest in the matter and the readiness of my General Counsel and his staff to meet with your designated representatives at any time to work out a mutually satisfactory bill.

Sincerely,

/s/ E. H. Knoche

E. H. Knoche
Acting Director

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